

CHAPTER 27**GARNISHMENTS****2701 BACKGROUND**

Public Law 93-647, section 459 (reference (ec)), waived the United States' sovereign immunity from suit to allow garnishment (or similar process in the nature of garnishment) against the United States for the enforcement of child support and alimony obligations of certain U.S. Government employees, including active duty and retired members of the Armed Forces. Public Law 95-30, section 509 (reference (ed)), which made substantial changes in the garnishment law, clarified congressional intent, and authorized issuance of regulations to establish procedures to carry out the provisions of the garnishment law.

2702 PURPOSE

This chapter prescribes guidelines for administering the garnishment law for payment of retired members.

2703 SCOPE

The Armed Forces must comply with valid legal process issued for the enforcement of child support or alimony obligations by federal and state courts or administrative agencies when such agencies are authorized by state law to issue such legal process. The member's retired pay, based upon remuneration for employment, is subject to legal process the same as if the United States were a private person. However, the DFAS Centers are not required to vary their normal pay and disbursement cycle to comply with any such legal process.

2704 DEFINITIONS

270401. Alimony. This is defined as periodic payments of funds for the support and maintenance of a spouse or former spouse. Alimony includes (subject to and in accordance with state law) separate maintenance, alimony pending legal process, maintenance, and spousal support. It also includes attorney fees, interest, and court costs when, and to the extent that they are, expressly made recoverable as such by a decree, order, or judgment issued in accordance with applicable state law by a court of competent jurisdiction. Alimony, as used in Chapters 27 through 29 of this volume, excludes payments or transfers of property made in compliance with any community property settlement, equitable distribution of property, or other division of property between the spouses or former spouses.

270402. Child Support. This is defined as periodic payments of funds for the support and maintenance of a child or children. Subject to and in accordance with state law, child support includes (but is not limited to) payments to provide for health care, education, recreation, clothing, or other specific needs. It also includes attorney fees, interest, and court costs, when and to the

extent that they are made recoverable as such by a decree, order, or judgment issued in accordance with applicable state law by a court of competent jurisdiction.

270403. Disposable Earnings. This is defined as that part of an individual's earnings remaining after lawful deductions. To determine disposable earnings of retired members, deduct the following from gross retired pay:

- A. Amounts withheld in payment of debts owed to the United States;
- B. Deductions required by law (i.e., SBP and RSFPP cost deductions, deductions for VA waiver, and dual compensation);
- C. Federal income tax withholding (FITW), if required or authorized by law. Additional amounts for tax withholding are made from retired pay only when the member submits evidence of a tax obligation, which supports the additional withholding.
- D. State income tax withholding if authorized (i.e., when the retiree's state of legal residence has a withholding agreement with the Department of Defense). The amount withheld will not exceed the retiree's estimated retired pay state income tax liability.

270404. Legal Process. This is defined as any writ, order, summons, or other similar process in the nature of garnishment. Legal process may be issued by:

- A. A court of competent jurisdiction within any state, territory, or possession of the United States;
- B. A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that obligates the United States to honor such process or,
- C. An authorized official according to an order of such a court of competent jurisdiction or pursuant to state or local law.

270405. Remuneration for Employment. This term includes severance pay, retirement or retired pay including disability retired pay, and RSFPP, SBP, and limited income widow's annuities. Does not include death gratuity.

270406. Wage Assignment. This is defined as an order of the court assigning a portion of the member's retired pay on a continuing basis without a recurring court order. Wage assignments are valid only if specifically authorized by state law.

2705 RECEIPT OF PROCESS

270501. Method of Service. The document invoking the legal process to enforce an individual's obligations to provide child support or alimony is served by certified or registered mail

(return receipt requested) or by personal service upon the head of the government entity having payment responsibility for the money involved, or on its designee. The process should be served by a party who, under state law, is authorized to do so. The process must be accompanied by data to permit prompt identification of the individual and the monies involved and must clearly show that it is issued for child support or alimony.

270502. Designated Activity

Director
Defense Finance and Accounting Service -
Cleveland Center
Attn: Director, Retired Pay Operations
Anthony J. Celebrezze Federal Building
Cleveland, OH 44199-2055

2706 EFFECTS ON ALLOTMENTS

270601. Allotments are stopped to comply with a writ of garnishment or attachment in the following order unless the member advises his or her Military Service otherwise.

- A. Charitable contributions
- B. Bonds
- C. Savings
- D. Loans
- E. Delinquent state or local income taxes
- F. Dependents
- G. Home loans
- H. Commercial insurance
- I. Army, Navy Mutual Aid Insurance
- J. U.S. Government Life Insurance

270602. Allotments for repayment of indebtedness to the United States or delinquent federal taxes may not be garnished.

270603. Allotments for individuals who are garnishing the pay of members are subject to garnishment or attachment. Allotments to dependents or relatives are not involuntarily

cancelled if there are funds remaining for payment of the allotment after the garnishment has been honored.

270604. Allotments discontinued to satisfy a garnishment action may be reinstated by the paying office upon request of the retiree when such amounts are no longer needed to satisfy the garnishment action.

270605. Allotments of pay for delinquent state or local income or employment taxes will not be excluded from pay subject to garnishment.

2707 RESPONSIVE PLEADINGS

Response to interrogatories or to legal process seeking the payment of child support or alimony obligations must be made within 30 days (or a longer period if provided by applicable state law or if there is an agreement for extension of time) from the effective date of service.

2708 NOTICE TO MEMBER

The person who is served must, as soon as possible but no more than 15 days after the date of service, send written notice to the retired member whose pay is affected that the process has been served. The notice must explain the potential effect of the legal process on the member's pay and should be accompanied by a copy of the process and all pertinent documents.

2709 LIMITATIONS

The amount of pay subject to garnishment or similar process for child support or alimony is limited to 50 percent of disposable pay if the member is supporting a second family or 60 percent if the member is not supporting a second family. If, however, the member is more than 12 weeks in arrears, the amount subject to legal process is increased to 55 percent where the member is supporting a second family, and 65 percent where the member is not supporting a second family.

2710 LIABILITIES

271001. Neither the United States nor any disbursing officer or other government entity is liable for any payment made from monies due or payable from the United States to any individual according to legal process if the payment is made in accordance with the regulations pertaining to garnishments.

271002. Federal employees, whose duties include responding to relevant interrogatories made before issuance of legal process and authorized by law, are not subject to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosures of information made in connection with the answering of such interrogatories.

2711 PRIORITIES

271101. Legal Process Issued From Two or More Parties

A. When a governmental entity is served with more than one legal process with respect to money payable to any individual, available pay is available on a first-come, first-served basis.

B. The next process is satisfied out of pay subject to garnishment that remains after the prior process has been satisfied.

271102. Effect of Tax Levies on Garnishment

A. The amount of pay being withheld in garnishment or similar legal process according to a judgment by a court of competent jurisdiction for child support or alimony may not be used to satisfy a notice of levy for unpaid federal taxes.

B. To take priority, legal process for collection of alimony must be served before receipt of the tax levy.

C. If an attaching process containing indebtedness for both child support and alimony is served before a tax levy, both take precedence; however, if the judgment predates the tax levy but the attaching process is served after the tax levy, only child support is entitled to exemption and the levy is entitled to priority.

2712 COLLECTIONS BY GARNISHMENTS

A garnishment procedure may not attach more than 65 percent of a retired member's disposable earnings. If the member is indebted to the United States, only so much of the indebtedness that is being withheld each month is deducted from gross earnings to calculate disposable earnings.

EXAMPLE: An order is served June 1, 1977 on the designated activity against pay of retiree. The retiree's monthly gross is \$1,500; SBP cost, \$127.50; FITW, \$205.88; and he or she is indebted to the United States for \$2,000. Liquidation of the indebtedness has been established at the rate of \$500 per month. Gross earnings thus are reduced by the debt deduction (that is, \$500), SBP cost, and FITW, resulting in disposable earnings of \$666.62. The 65-percent rule limits the garnishment to \$433.30 (\$666.62 X 65 percent) and member receives \$233.32 (\$666.62 minus \$433.30).

2713 GARNISHMENT OF RENOUNCED PAY

A writ of garnishment must be honored even though the member has renounced receipt of pay. Entitlement to pay continues as "due from or payable by" the United States and is subject to garnishment. The right to accrue pay may not be waived, except as authorized by law. See Chapter 12 of this volume concerning the waiver of retired pay.